IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 252 OF 2006
IN
SUIT NO. 3520 OF 2005

Pandurang Narshinha Kamat .. Plaintiff.

V/s.

1. Smt.Shantiben Vajralal Kapadia & Ors. .. Defendants.

Mr.R.D.Dave i/by N.N.Vaishnawa for the Plaintiff.

Mrs.Anita A.Agarwal i/by Indrajeet R.Kulkarni for the Defendant No.3.

CORAM : S. A. BOBDE, J.

DATED : 05th FEBRUARY, 2007.

P.C.:

. This motion is taken out by the plaintiff for appointment of a court receiver in respect of the suit stall, adjacent to his shop No.6, Gr.floor, Asgar Manzil, Bhoiwada Naka, Jerbai Wadia Rd., Mumbai -400 012. The defendants, in particular, the defendant No.3 appears to be in occupation of the suit stall from where he is selling newspapers. The plaintiff’s case is that he is the tenant of the suit premises and that the adjacent suit stall was given by him by a conducting agreement to one Kiritkumar Vrajlal Kapadia from the year 1972 to 1973. The agreement is at Exh.‘A’ to the

plaint. After Kiritkumar Kapadia died, apparently the defendant No.2 continued in the said suit stall. Now the plaintiff finds that the third defendant is in occupation. The plaintiff's case is that the third defendant is in occupation without any authority whatsoever from the plaintiff.

2. Mrs.Agrawal, the learned counsel for the defendant No.3 submitted that the said defendant is in occupation of the suit stall much prior to 2005, as claimed by the plaintiff. The learned counsel relied on a licence of November, 2001 issued under the Shops and Establishments Act and electricity bill of the year 1992. The learned counsel for the plaintiff submits that these documents are not genuine.

3. One thing is clear that the defendant has not been able to point out any authority, permission or licence from the plaintiff or anyone else to support his case in respect of the suit premises, i.e. the stall. The learned counsel for the third defendant submitted that the stall is the only source for the third defendant's livelihood and therefore, the third defendant should not be dispossessed.

4. The third defendant has also relied on a receipt

for an amount paid by him to the plaintiff. That receipt is now sought to be explained as having been issued under coercion.

5. Mrs. Agarwal, the learned counsel for the third defendant further submitted that the suit itself is not tenable because it is filed at the instance of the plaintiff, who is a tenant in the absence of the true owner of the property, which belongs to a trust. Prima facie, this cannot be the only ground for rejecting consideration of the appointment of the court receiver. More-over this issue can be decided at a subsequent stage.

6. Having regard to the circumstances and in the absence of any authority to occupy the suit stall by the defendant No.3, I find that this is a fit case for appointment of a court receiver who shall appoint the third defendant as his agent on such terms and conditions as he considers appropriate.

7. Notice of motion is allowed.

8. The learned counsel for the third defendant prays for stay of this order. Prayer for stay is rejected.

(S.A.BOBDE,J.)

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